

AMENDED IN ASSEMBLY AUGUST 18, 2005

AMENDED IN ASSEMBLY JULY 12, 2005

AMENDED IN SENATE MAY 31, 2005

AMENDED IN SENATE MAY 23, 2005

AMENDED IN SENATE MAY 17, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE MAY 2, 2005

AMENDED IN SENATE APRIL 25, 2005

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**SENATE BILL**

**No. 803**

**Introduced by Senator Ducheny**

February 22, 2005

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An act to amend Sections 11999.5, 11999.6, 11999.9, 11999.10, and 11999.12 of the Health and Safety Code, and to amend Sections 1210, 1210.1, and 3063.1 of the Penal Code, relating to drug treatment, *making an appropriation therefor*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 803, as amended, Ducheny. Ongoing Substance Abuse and Crime Prevention Act of 2005.

Existing law, the Substance Abuse and Crime Prevention Act of 2000, was enacted by the voters at the November 2000 general election. Amendment of the act by the Legislature requires a 2/3 vote of both houses of the Legislature. The act requires all amendments to it to further the act and be consistent with its purposes. The act defines

“drug treatment program” for purposes of the act, and specifically excludes in-custody drug treatment from that definition.

The act defines “successful completion of treatment” as a defendant who has completed the prescribed course of treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

This bill would instead define “successful completion of treatment” as a defendant who has completed the prescribed course of treatment. Completion of treatment would not mean cessation of narcotic replacement therapy.

The act requires any person convicted of a nonviolent drug possession offense to receive probation. As a condition of probation, the court is required to require a defendant to participate in, and complete, an appropriate drug treatment program. The act prohibits the imposition of incarceration as a condition of probation.

This bill would require drug testing as a condition of probation. The bill would require a person subject to the act to be monitored by the court, as specified.

The act does not apply to a defendant who has been convicted of one or more serious or violent felonies, unless the nonviolent drug possession offense occurred more than 5 years after the defendant was free from custody for the prior offense and from the commission of other types of crimes against a person.

This bill would, with respect to the above description of a defendant to whom the act does not apply, add the condition that in order to exclude a defendant the court must find that the defendant poses a danger to the safety of others and would not benefit from a drug treatment program, and would similarly prohibit a person who has previously served 3 separate prison terms for non-drug-related felonies from benefiting from the provisions of the bill, if the court makes that finding. The bill would provide that the court shall state its findings, and the reasons for those findings, on the record.

The act does not apply to any defendant who, while using a firearm unlawfully possesses or is unlawfully under the influence of certain controlled substances.

This bill would instead make its provisions inapplicable to any defendant who, while armed with a deadly weapon unlawfully possesses or is under the influence of certain controlled substances.

Under the act, a defendant may petition the sentencing court for dismissal of the charges at any time after completion of drug treatment.

This bill would authorize the court, after a hearing to determine whether the defendant has successfully completed treatment and probation, including refraining from the use of drugs after completion of treatment, to set the conviction aside, as specified.

Under the act, once the indictment, complaint, or information is dismissed, a record pertaining to the arrest and conviction for that offense may not be used to deny the defendant employment.

Under the act, if a defendant violates probation, as specified, the court may revoke probation or it may intensify or alter the drug treatment plan.

This bill would authorize a court to also order incarceration for a specified period, in order to enhance treatment compliance, and in some circumstances, to order the defendant to complete a residential drug treatment program, if available, or be placed in a county jail for not more than 10 days for detoxification purposes only. This bill would however, provide that no incarceration costs will be reimbursed from the fund.

The act appropriates ~~\$60,000,000~~ *\$120,000,000* per year for purposes of the act, through the 2005-06 fiscal year. ~~The act prohibits money appropriated for its purposes to be used for drug testing.~~

~~This bill would state the Legislature's intent to appropriate funds annually in the Budget Act appropriate \$120,000,000 per year through the 2010-11 fiscal year.~~

Existing law requires an annual study to evaluate the effectiveness of the act.

This bill would change the items to be included in that study.

Existing law, with some exceptions, prohibits the suspension or revocation of parole for commission of a nonviolent drug possession offense or violating any drug-related condition of parole. Further, existing law prescribes the steps the Parole Authority is to take upon this type of violation, and the actions that any drug treatment provider must thereafter take, as specified. Drug treatment services are not to be required as a condition of parole for longer than 12 months.

~~This bill would change some references to the Parole Authority, to authorize the Department of Corrections Parole Division. Further this bill would allow the department to make a finding that treatment beyond 12 months is necessary, and under those conditions, treatment~~

may extended to 24 months. *The bill would make clarifying changes to related provisions.*

Because the bill would increase punishment for crimes, including authorizing jail time, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Further, this bill would declare that the provisions of the act are severable and any provision found to be invalid shall be submitted to the voters at the next election.

Vote:  $\frac{2}{3}$ . Appropriation: ~~no~~-yes. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11999.5 of the Health and Safety Code  
2 is amended to read:  
3 11999.5. Upon passage of this act, \$60,000,000 shall be  
4 continuously appropriated from the General Fund to the  
5 Substance Abuse Treatment Trust Fund for the 2000-01 fiscal  
6 year. There is hereby continuously appropriated from the General  
7 Fund to the Substance Abuse Treatment Trust Fund an additional  
8 \$120,000,000 for the 2001-02 fiscal year, *and* an additional sum  
9 of \$120,000,000 for each subsequent fiscal year until the ~~2005-06~~  
10 ~~fiscal year. It is the intent of the Legislature to appropriate to the~~  
11 ~~Substance Abuse Treatment Trust Fund an amount no less than~~  
12 ~~one hundred twenty million dollars (\$120,000,000) in the annual~~  
13 ~~Budget Act. 2010-11 fiscal year.~~ These funds shall be transferred  
14 to the Substance Abuse Treatment Trust Fund on July 1 of each  
15 of these specified fiscal years. Funds transferred to the Substance  
16 Abuse Treatment Trust Fund are not subject to annual  
17 appropriation by the Legislature and may be used without a time  
18 limit. Nothing in this section precludes additional appropriations  
19 by the Legislature to the Substance Abuse Treatment Trust Fund.

SEC. 2. Section 11999.6 of the Health and Safety Code is amended to read:

11999.6. Moneys deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the Secretary of the Health and Human Services Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of placing persons in and providing drug treatment programs under this act, and vocational training, family counseling and literacy training under this act. Additional costs that may be reimbursed from the Substance Abuse Treatment Trust Fund include probation department costs, court monitoring costs and any miscellaneous costs made necessary by the provisions of this act. Incarceration costs cannot be reimbursed from the fund. Those moneys shall be allocated to counties through a fair and equitable distribution formula that includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of this act. The department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the director of the department has determined that demand for drug treatment services is not adequately met by existing programs. However, nothing in this section shall be interpreted or construed to allow any entity to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment. *In addition, funds from the Substance Abuse Treatment Trust Fund shall not be used to fund in any way the drug treatment courts established pursuant to Article 2 (commencing with Section 11970.1) or Article 3 (commencing with Section 11970.4) of Chapter 2 of Part 3 of Division 10.5, including drug treatment or probation supervision associated with those drug treatment courts.*

SEC. 3. Section 11999.9 of the Health and Safety Code is amended to read:

11999.9. The department shall conduct two three-year followup studies to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act, and submit those evaluations to the

Legislature not later than July 1, 2010, and July 1, 2013. The evaluation studies shall include, but not be limited to, (a) criminal justice measures on rearrests, jail and prison days averted, crime trends, and (b) treatment measures on completion rates and quality of life indicators, such as alcohol and drug use, employment, health, mental health, and family and social supports.

In addition to the studies to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act, the department shall produce an annual report detailing the number and characteristics of participants served as a result of this act and the related costs.

SEC. 4. Section 11999.10 of the Health and Safety Code is amended to read:

11999.10. Outside Evaluation Process

The department shall allocate up to 0.5 percent of the fund's total moneys each year to fund the costs of the studies required in Section 11999.9 by a public or private university or other public or private institution with similar research qualifications.

SEC. 5. Section 11999.12 of the Health and Safety Code is amended to read:

11999.12. Audit of Expenditures

The department shall conduct periodic audits of the expenditures made by any county that is funded, in whole or in part, with funds provided by this act. Counties shall repay to the department any funds that are not spent in accordance with the requirements of this act. In making repayment, a county may use trust fund moneys previously or presently allocated to the county under this act, or the department may require a corrective action by the county in the place of repayment, as determined by the department.

SEC. 6. Section 1210 of the Penal Code is amended to read:

1210. As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code, the following definitions apply:

(a) The term "nonviolent drug possession offense" means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or the offense of being under the

influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term “nonviolent drug possession offense” does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

(b) The term “drug treatment program” or “drug treatment” means a state licensed or certified community drug treatment program, which may include one or more of the following: (1) drug education, (2) outpatient services, (3) narcotic replacement therapy, (4) residential treatment, (5) detoxification services, and (6) aftercare services. The term “drug treatment program” or “drug treatment” includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001. That type of program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term “drug treatment program” or “drug treatment” does not include drug treatment programs offered in a prison or jail facility.

(c) The term “successful completion of treatment” means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court. Completion of treatment shall not require cessation of narcotic replacement therapy.

(d) The term “misdemeanor not related to the use of drugs” means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in (1).

SEC. 7. Section 1210.1 of the Penal Code is amended to read:

1210.1. (a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation, the court shall require participation in and completion of an appropriate drug treatment program. The court shall impose appropriate drug testing as a condition of probation. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose

1 incarceration as an additional condition of probation. Aside from  
2 the limitations imposed in this subdivision, the trial court is not  
3 otherwise limited in the type of probation conditions it may  
4 impose. Probation shall be imposed by suspending the imposition  
5 of sentence. No person shall be denied the opportunity to benefit  
6 from the provisions of the act based solely upon evidence of a  
7 co-occurring psychiatric or developmental disorder.

8 To the greatest extent possible, any person who is convicted of,  
9 and placed on probation for, a nonviolent drug possession  
10 offense under this section shall be monitored by the court  
11 through the use of a dedicated court calendar and the  
12 incorporation of a collaborative court model of oversight that  
13 includes close collaboration with treatment providers and  
14 probation, drug testing commensurate with treatment needs and  
15 supervision of progress through review hearings.

16 In addition to any fine assessed under other provisions of law,  
17 the trial judge may require any person convicted of a nonviolent  
18 drug possession offense who is reasonably able to do so to  
19 contribute to the cost of his or her own placement in a drug  
20 treatment program.

21 (b) Subdivision (a) shall not apply to any of the following:

22 (1) Any defendant who previously has been convicted of one  
23 or more serious or violent felonies as defined in subdivision (c)  
24 of Section 667.5 or subdivision (c) of Section 1192.7, unless the  
25 nonviolent drug possession offense occurred after a period of five  
26 years in which the defendant remained free of both prison  
27 custody and the commission of an offense that results in a felony  
28 conviction other than a nonviolent drug possession offense, or a  
29 misdemeanor conviction involving physical injury or the threat  
30 of physical injury to another person.

31 (2) Any defendant who, in addition to one or more nonviolent  
32 drug possession offenses, has been convicted in the same  
33 proceeding of a misdemeanor not related to the use of drugs or  
34 any felony.

35 (3) Any defendant who, while armed with a deadly weapon  
36 with the intent to use same as a deadly weapon, unlawfully  
37 possesses, or is under the influence of, any controlled substance  
38 identified in Section 11054, 11055, 11056, 11057, or 11058 of  
39 the Health and Safety Code.



1 (4) Any defendant who refuses drug treatment as a condition  
2 of probation.

3 (5) Any defendant who has two separate convictions for  
4 nonviolent drug possession offenses, has participated in two  
5 separate courses of drug treatment pursuant to subdivision (a),  
6 and is found by the court, by clear and convincing evidence, to  
7 be unamenable to any and all forms of available drug treatment,  
8 as defined in subdivision (b) of Section 1210. Notwithstanding  
9 any other provision of law, the trial court shall sentence those  
10 defendants to 30 days in jail.

11 (c) Any defendant who has previously been convicted of at  
12 least three non-drug-related felonies for which the defendant has  
13 served three separate prison terms within the meaning of  
14 subdivision (b) of Section 667.5 of the Penal Code shall be  
15 presumed eligible for treatment under subdivision (a). The court  
16 may exclude such a defendant from treatment under subdivision  
17 (a) where the court, pursuant to the motion of the prosecutor or  
18 its own motion, finds that the defendant poses a present danger to  
19 the safety of others and would not benefit from a drug treatment  
20 program. The court shall state its findings, and the reasons for  
21 those findings, on the record.

22 (d) Within seven days of an order imposing probation under  
23 subdivision (a), the probation department shall notify the drug  
24 treatment provider designated to provide drug treatment under  
25 subdivision (a). Within 30 days of receiving that notice, the  
26 treatment provider shall prepare a treatment plan and forward it  
27 to the probation department for distribution to the court and  
28 counsel. The treatment provider shall provide to the probation  
29 department standardized treatment progress reports, with  
30 minimum data elements as determined by the department,  
31 including all drug testing results. At a minimum, the reports shall  
32 be provided to the court every 90 days, or more frequently, as the  
33 court directs.

34 (1) If at any point during the course of drug treatment the  
35 treatment provider notifies the probation department and the  
36 court that the defendant is unamenable to the drug treatment  
37 being provided, but may be amenable to other drug treatments or  
38 related programs, the probation department may move the court  
39 to modify the terms of probation, or on its own motion, the court

1 may modify the terms of probation after a hearing to ensure that  
2 the defendant receives the alternative drug treatment or program.

3 (2) If at any point during the course of drug treatment the  
4 treatment provider notifies the probation department and the  
5 court that the defendant is unamenable to the drug treatment  
6 provided and all other forms of drug treatment programs pursuant  
7 to subdivision (b) of Section 1210, the probation department may  
8 move to revoke probation. At the revocation hearing, if it is  
9 proved that the defendant is unamenable to all drug treatment  
10 programs pursuant to subdivision (b) of Section 1210, the court  
11 may revoke probation.

12 (3) Drug treatment services provided by subdivision (a) as a  
13 required condition of probation may not exceed 12 months,  
14 unless the court makes a finding supported by the record, that the  
15 continuation of treatment services beyond 12 months is necessary  
16 for drug treatment to be successful. If such a finding is made, the  
17 court may order up to two six-month extensions of treatment  
18 services. The provision of treatment services under this act shall  
19 not exceed 24 months.

20 (e) (1) At any time after completion of drug treatment and the  
21 terms of probation, the court shall conduct a hearing, and if the  
22 court finds that the defendant successfully completed drug  
23 treatment, and substantially complied with the conditions of  
24 probation, including refraining from the use of drugs after the  
25 completion of treatment, the conviction on which the probation  
26 was based shall be set aside and the court shall dismiss the  
27 indictment, complaint, or information against the defendant. In  
28 addition, except as provided in paragraphs (2) and (3), both the  
29 arrest and the conviction shall be deemed never to have occurred.  
30 The defendant may additionally petition the court for a dismissal  
31 of charges at any time after completion of the prescribed course  
32 of drug treatment. Except as provided in paragraph (2) or (3), the  
33 defendant shall thereafter be released from all penalties and  
34 disabilities resulting from the offense of which he or she has been  
35 convicted.

36 (2) Dismissal of an indictment, complaint, or information  
37 pursuant to paragraph (1) does not permit a person to own,  
38 possess, or have in his or her custody or control any firearm  
39 capable of being concealed upon the person or prevent his or her  
40 conviction under Section 12021.

(3) Except as provided below, after an indictment, complaint, or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information, complaint, or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in Section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

(f) (1) If probation is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

(2) If a defendant receives probation under subdivision (a), and violates that probation either by committing an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court may remand the defendant for a period not exceeding 30 days during which time the court may receive input from treatment, probation, the state, and the defendant, and the court may conduct further hearings as it deems appropriate to determine whether or not probation should be reinstated under this section. If the court reinstates the defendant on probation, the court may modify the treatment plan and any other terms of probation, and continue the defendant in a treatment program under this act. If the court reinstates the defendant on probation, the court may, after receiving input from

1 the treatment provider and probation, if available, intensify or  
2 alter the treatment plan under subdivision (a), and impose  
3 sanctions, including jail sanctions not exceeding 30 days, as a  
4 tool to enhance treatment compliance.

5 (3) (A) If a defendant receives probation under subdivision  
6 (a), and violates that probation either by committing a nonviolent  
7 drug possession offense, or a misdemeanor for simple possession  
8 or use of drugs or drug paraphernalia, being present where drugs  
9 are used, or failure to register as a drug offender, or any activity  
10 similar to those listed in subdivision (d) of Section 1210, or by  
11 violating a drug-related condition of probation, and the state  
12 moves to revoke probation, the court shall conduct a hearing to  
13 determine whether probation shall be revoked. The trial court  
14 shall revoke probation if the alleged probation violation is proved  
15 and the state proves by a preponderance of the evidence that the  
16 defendant poses a danger to the safety of others. If the court does  
17 not revoke probation, it may intensify or alter the drug treatment  
18 plan, and in addition, if the violation does not involve the recent  
19 use of drugs as a circumstance of the violation, including, but not  
20 limited to, violations relating to failure to appear at treatment or  
21 court, noncompliance with treatment, and failure to report for  
22 drug testing, the court may impose sanctions including jail  
23 sanctions that may not exceed 48 hours of continuous custody as  
24 a tool to enhance treatment compliance and impose other changes  
25 in the terms and conditions of probation. The court shall  
26 consider, among other factors, the seriousness of the violation,  
27 previous treatment compliance, employment, education,  
28 vocational training, medical conditions, medical treatment,  
29 including narcotics replacement treatment, child support  
30 obligations, and family responsibilities. If one of the  
31 circumstances of the violation involves recent drug use, as well  
32 as other circumstances of violation, and the circumstance of  
33 recent drug use is demonstrated to the court by satisfactory  
34 evidence and a finding made on the record, the court may, after  
35 receiving input from treatment and probation, if available, direct  
36 the defendant to enter a licensed detoxification or residential  
37 treatment facility, and if there is no bed immediately available in  
38 such a facility, the court may order that the defendant be  
39 confined in a county jail for detoxification purposes only, if the  
40 jail offers detoxification services, for a period not to exceed 10

1 days. The detoxification services must provide narcotic  
2 replacement therapy for those defendants presently actually  
3 receiving narcotic replacement therapy.

4 (B) If a defendant receives probation under subdivision (a),  
5 and for the second time violates that probation either by  
6 committing a nonviolent drug possession offense, or a  
7 misdemeanor for simple possession or use of drugs or drug  
8 paraphernalia, being present where drugs are used, or failure to  
9 register as a drug offender, or any activity similar to those listed  
10 in subdivision (d) of Section 1210, or by violating a drug-related  
11 condition of probation, and the state moves to revoke probation,  
12 the court shall conduct a hearing to determine whether probation  
13 shall be revoked. The trial court shall revoke probation if the  
14 alleged probation violation is proved and the state proves by a  
15 preponderance of the evidence either that the defendant poses a  
16 danger to the safety of others or is unamenable to drug treatment.  
17 In determining whether a defendant is unamenable to drug  
18 treatment, the court may consider, to the extent relevant, whether  
19 the defendant (i) has committed a serious violation of rules at the  
20 drug treatment program, (ii) has repeatedly committed violations  
21 of program rules that inhibit the defendant's ability to function in  
22 the program, or (iii) has continually refused to participate in the  
23 program or asked to be removed from the program. If the court  
24 does not revoke probation, it may intensify or alter the drug  
25 treatment plan, and may, in addition, if the violation does not  
26 involve the recent use of drugs as a circumstance of the violation,  
27 including, but not limited to, violations relating to failure to  
28 appear at treatment or court, noncompliance with treatment, and  
29 failure to report for drug testing, impose sanctions including jail  
30 sanctions that may not exceed 120 hours of continuous custody  
31 as a tool to enhance treatment compliance and impose other  
32 changes in the terms and conditions of probation. The court shall  
33 consider, among other factors, the seriousness of the violation,  
34 previous treatment compliance, employment, education,  
35 vocational training, medical conditions, medical treatment,  
36 including narcotics replacement treatment, child support  
37 obligations, and family responsibilities. If one of the  
38 circumstances of the violation involves recent drug use, as well  
39 as other circumstances of violation, and the circumstance of  
40 recent drug use is demonstrated to the court by satisfactory

1 evidence and a finding made on the record, the court may, after  
2 receiving input from treatment and probation, if available, direct  
3 the defendant to enter a licensed detoxification or residential  
4 treatment facility, and if there is no bed immediately available in  
5 the facility, the court may order that the defendant be confined in  
6 a county jail for detoxification purposes only, if the jail offers  
7 detoxification services, for a period not to exceed 10 days.  
8 Detoxification services must provide narcotic replacement  
9 therapy for those defendants presently actually receiving narcotic  
10 replacement therapy.

11 (C) If a defendant receives probation under subdivision (a),  
12 and for the third or subsequent time violates that probation either  
13 by committing a nonviolent drug possession offense, or by  
14 violating a drug-related condition of probation, and the state  
15 moves for a third or subsequent time to revoke probation, the  
16 court shall conduct a hearing to determine whether probation  
17 shall be revoked. If the alleged probation violation is proved, the  
18 defendant is not eligible for continued probation under  
19 subdivision (a) unless the court determines that the defendant is  
20 not a danger to the community and would benefit from further  
21 treatment under subdivision (a). The court may then either  
22 intensify or alter the treatment plan under subdivision (a) or  
23 transfer the defendant to a highly structured drug court. If the  
24 court continues the defendant in treatment under subdivision (a),  
25 or drug court, the court may impose appropriate sanctions  
26 including jail sanctions as the court deems appropriate.

27 (D) If a defendant on probation at the effective date of this act  
28 for a nonviolent drug possession offense violates that probation  
29 either by committing a nonviolent drug possession offense, or a  
30 misdemeanor for simple possession or use of drugs or drug  
31 paraphernalia, being present where drugs are used, or failure to  
32 register as a drug offender, or any activity similar to those listed  
33 in subdivision (d) of Section 1210, or by violating a drug-related  
34 condition of probation, and the state moves to revoke probation,  
35 the court shall conduct a hearing to determine whether probation  
36 shall be revoked. The trial court shall revoke probation if the  
37 alleged probation violation is proved and the state proves by a  
38 preponderance of the evidence that the defendant poses a danger  
39 to the safety of others. If the court does not revoke probation, it  
40 may modify or alter the treatment plan, and in addition, if the

1 violation does not involve the recent use of drugs as a  
2 circumstance of the violation, including, but not limited to,  
3 violations relating to failure to appear at treatment or court,  
4 noncompliance with treatment, and failure to report for drug  
5 testing, the court may impose sanctions including jail sanctions  
6 that may not exceed 48 hours of continuous custody as a tool to  
7 enhance treatment compliance and impose other changes in the  
8 terms and conditions of probation. The court shall consider,  
9 among other factors, the seriousness of the violation, previous  
10 treatment compliance, employment, medical conditions, child  
11 support obligations, and family responsibilities. If one of the  
12 circumstances of the violation involves recent drug use, as well  
13 as other circumstances of violation, and the circumstance of  
14 recent drug use is demonstrated to the court by satisfactory  
15 evidence and a finding made on the record, the court may, after  
16 receiving input from treatment and probation, if available, direct  
17 the defendant to enter a licensed detoxification or residential  
18 treatment facility, and if there is no bed immediately available in  
19 such a facility, the court may order that the defendant be  
20 confined in a county jail for detoxification purposes only, if the  
21 jail offers detoxification services, for a period not to exceed 10  
22 days. The detoxification services must provide narcotic  
23 replacement therapy for those defendants presently actually  
24 receiving narcotic replacement therapy.

25 (E) If a defendant on probation at the effective date of this act  
26 for a nonviolent drug possession offense violates that probation a  
27 second time either by committing a nonviolent drug possession  
28 offense, or a misdemeanor for simple possession or use of drugs  
29 or drug paraphernalia, being present where drugs are used, or  
30 failure to register as a drug offender, or any activity similar to  
31 those listed in subdivision (d) of Section 1210, or by violating a  
32 drug-related condition of probation, and the state moves for a  
33 second time to revoke probation, the court shall conduct a  
34 hearing to determine whether probation shall be revoked. The  
35 trial court shall revoke probation if the alleged probation  
36 violation is proved and the state proves by a preponderance of the  
37 evidence either that the defendant poses a danger to the safety of  
38 others or that the defendant is unamenable to drug treatment. If  
39 the court does not revoke probation, it may modify or alter the  
40 treatment plan, and in addition, if the violation does not involve

1 the recent use of drugs as a circumstance of the violation,  
2 including, but not limited to, violations relating to failure to  
3 appear at treatment or court, noncompliance with treatment, and  
4 failure to report for drug testing, the court may impose sanctions  
5 including jail sanctions that may not exceed 120 hours of  
6 continuous custody as a tool to enhance treatment compliance  
7 and impose other changes in the terms and conditions of  
8 probation. The court shall consider, among other factors, the  
9 seriousness of the violation, previous treatment compliance,  
10 employment, medical conditions, child support obligations, and  
11 family responsibilities. If one of the circumstances of the  
12 violation involves recent drug use, as well as other circumstances  
13 of violation, and the circumstance of recent drug use is  
14 demonstrated to the court by satisfactory evidence and a finding  
15 made on the record, the court may, after receiving input from  
16 treatment and probation, if available, direct the defendant to enter  
17 a licensed detoxification or residential treatment facility, and if  
18 there is no bed immediately available in the facility, the court  
19 may order that the defendant be confined in a county jail for  
20 detoxification purposes only, if the jail offers detoxification  
21 services, for a period not to exceed 10 days. Detoxification  
22 services must provide narcotic replacement therapy for those  
23 defendants presently actually receiving narcotic replacement  
24 therapy.

25 (F) If a defendant on probation at the effective date of this act  
26 for a nonviolent drug offense violates that probation a third or  
27 subsequent time either by committing a nonviolent drug  
28 possession offense, or by violating a drug-related condition of  
29 probation, and the state moves for a third or subsequent time to  
30 revoke probation, the court shall conduct a hearing to determine  
31 whether probation shall be revoked. If the alleged probation  
32 violation is proved, the defendant is not eligible for continued  
33 probation under subdivision (a), unless the court determines that  
34 the defendant is not a danger to the community and would benefit  
35 from further treatment under subdivision (a). The court may then  
36 either intensify or alter the treatment plan under subdivision (a)  
37 or transfer the defendant to a highly structured drug court. If the  
38 court continues the defendant in treatment under subdivision (a),  
39 or drug court, the court may impose appropriate sanctions  
40 including jail sanctions.



(g) The term “drug-related condition of probation” shall include a probationer’s specific drug treatment regimen, employment, vocational training, educational programs, psychological counseling, and family counseling.

SEC. 8. Section 3063.1 of the Penal Code is amended to read:

3063.1. Possession of Controlled Substances; Parole; Exceptions

(a) Notwithstanding any other provision of law, and except as provided in subdivision (d), parole may not be suspended or revoked for commission of a nonviolent drug possession offense or for violating any drug-related condition of parole.

As an additional condition of parole for all such offenses or violations, the Parole Authority shall require participation in and completion of an appropriate drug treatment program. Vocational training, family counseling and literacy training may be imposed as additional parole conditions.

The Parole Authority may require any person on parole who commits a nonviolent drug possession offense or violates any drug-related condition of parole, and who is reasonably able to do so, to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to:

(1) Any parolee who has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7.

(2) Any parolee who, while on parole, commits one or more nonviolent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs or any felony.

(3) Any parolee who refuses drug treatment as a condition of parole.

(c) Within seven days of a finding that the parolee has either committed a nonviolent drug possession offense or violated any drug-related condition of parole, the Department of Corrections Parole Division shall notify the treatment provider designated to provide drug treatment under subdivision (a). Within 30 days thereafter the treatment provider shall prepare an individualized drug treatment plan and forward it to the Parole Authority and to the Department of Corrections Parole Division agent responsible for supervising the parolee. On a quarterly basis after the parolee

1 begins drug treatment, the treatment provider shall prepare and  
2 forward a progress report on the individual parolee to these  
3 entities and individuals.

4 (1) If at any point during the course of drug treatment the  
5 treatment provider notifies the Department of Corrections Parole  
6 Division that the parolee is unamenable to the drug treatment  
7 provided, but amenable to other drug treatments or related  
8 programs, the Department of Corrections Parole Division may  
9 act to modify the terms of parole to ensure that the parolee  
10 receives the alternative drug treatment or program.

11 (2) If at any point during the course of drug treatment the  
12 treatment provider notifies the Department of Corrections Parole  
13 Division that the parolee is unamenable to the drug treatment  
14 provided and all other forms of drug treatment provided pursuant  
15 to subdivision (b) of Section 1210 and the amenability factors  
16 described in subparagraph (B) of paragraph (3) of subdivision (e)  
17 of Section 1210.1, the Department of Corrections Parole Division  
18 may act to revoke parole. At the revocation hearing, parole may  
19 be revoked if it is proved that the parolee is unamenable to all  
20 drug treatment.

21 (3) Drug treatment services provided by subdivision (a) as a  
22 required condition of parole may not exceed 12 months, unless  
23 the Department of Corrections Parole Division makes a finding  
24 supported by the record that the continuation of treatment  
25 services beyond 12 months is necessary for drug treatment to be  
26 successful. If that finding is made, the Department of Corrections  
27 Parole Division may order up to two six-month extensions of  
28 treatment services. The provision of treatment services under this  
29 act shall not exceed 24 months.

30 (d) Violation of parole

31 (1) If parole is revoked pursuant to the provisions of this  
32 subdivision, the defendant may be incarcerated pursuant to  
33 otherwise applicable law without regard to the provisions of this  
34 section. Parole shall be revoked if the parole violation is proved  
35 and a preponderance of the evidence establishes that the parolee  
36 poses a danger to the safety of others.

37 (2) Non-drug-related parole violations

38 If a parolee receives drug treatment under subdivision (a), and  
39 during the course of drug treatment violates parole either by  
40 committing an offense other than a nonviolent drug possession

1 offense, or by violating a non-drug-related condition of parole,  
2 and the Department of Corrections Parole Division acts to revoke  
3 parole, a hearing shall be conducted to determine whether parole  
4 shall be revoked.

5 Parole may be modified or revoked if the parole violation is  
6 proved.

7 (3) Drug-related parole violations

8 (A) If a parolee receives drug treatment under subdivision (a),  
9 and during the course of drug treatment violates parole either by  
10 committing a nonviolent drug possession offense, or a  
11 misdemeanor for simple possession or use of drugs or drug  
12 paraphernalia, being present where drugs are used, or failure to  
13 register as a drug offender, or any activity similar to those listed  
14 in subdivision (d) of Section 1210, or by violating a drug-related  
15 condition of parole, and the Department of Corrections Parole  
16 Division acts to revoke parole, a hearing shall be conducted to  
17 determine whether parole shall be revoked. Parole shall be  
18 revoked if the parole violation is proved and a preponderance of  
19 the evidence establishes that the parolee poses a danger to the  
20 safety of others. If parole is not revoked, the conditions of parole  
21 may be intensified to achieve the goals of drug treatment.

22 (B) If a parolee receives drug treatment under subdivision (a),  
23 and during the course of drug treatment for the second time  
24 violates that parole either by committing a nonviolent drug  
25 possession offense, or by violating a drug-related condition of  
26 parole, and the Department of Corrections Parole Division acts  
27 for a second time to revoke parole, a hearing shall be conducted  
28 to determine whether parole shall be revoked. If the alleged  
29 parole violation is proved, the parolee is not eligible for  
30 continued parole under any provision of this section and may be  
31 reincarcerated.

32 (C) If a parolee already on parole at the effective date of this  
33 act violates that parole either by committing a nonviolent drug  
34 possession offense, or a misdemeanor for simple possession or  
35 use of drugs or drug paraphernalia, being present where drugs are  
36 used, or failure to register as a drug offender, or any activity  
37 similar to those listed in paragraph (1) of subdivision (d) of  
38 Section 1210, or by violating a drug-related condition of parole,  
39 and the Department of Corrections Parole Division acts to revoke  
40 parole, a hearing shall be conducted to determine whether parole

1 shall be revoked. Parole shall be revoked if the parole violation is  
2 proved and a preponderance of the evidence establishes that the  
3 parolee poses a danger to the safety of others. If parole is not  
4 revoked, the conditions of parole may be modified to include  
5 participation in a drug treatment program as provided in  
6 subdivision (a). This paragraph does not apply to any parolee  
7 who at the effective date of this act has been convicted of one or  
8 more serious or violent felonies in violation of subdivision (c) of  
9 Section 667.5 or Section 1192.7.

10 (D) If a parolee already on parole at the effective date of this  
11 act violates that parole for the second time either by committing  
12 a nonviolent drug possession offense, or by violating a  
13 drug-related condition of parole, and the ~~Department of~~  
14 ~~Corrections Parole Division~~ *parole authority* acts for a second  
15 time to revoke parole, a hearing shall be conducted to determine  
16 whether parole shall be revoked. If the alleged parole violation is  
17 proved, the ~~parolee is not eligible for continued parole under any~~  
18 ~~provision of this section and may be reincarcerated.~~ *parolee may*  
19 *be reincarcerated or the conditions of parole may be intensified*  
20 *to achieve the goals of drug treatment.*

21 (e) The term “drug-related condition of parole” shall include a  
22 parolee’s specific drug treatment regimen, and, if ordered by the  
23 Department of Corrections Parole Division pursuant to this  
24 section, employment, vocational training, educational programs,  
25 psychological counseling, and family counseling.

26 SEC. 9. These provisions shall be applied prospectively, and  
27 are severable. If any provision of this act or its application is held  
28 invalid, that invalidity shall not affect other provisions or  
29 applications that can be given effect without the invalid provision  
30 or application.

31 SEC. 10. The Legislature finds and declares that the  
32 provisions of this act are consistent with the purposes of the  
33 Substance Abuse and Crime Prevention Act of ~~2006~~ 2000.

34 SEC. 11. No reimbursement is required by this act pursuant  
35 to Section 6 of Article XIII B of the California Constitution  
36 because the only costs that may be incurred by a local agency or  
37 school district will be incurred because this act creates a new  
38 crime or infraction, eliminates a crime or infraction, or changes  
39 the penalty for a crime or infraction, within the meaning of  
40 Section 17556 of the Government Code, or changes the

1 definition of a crime within the meaning of Section 6 of Article  
2 XIII B of the California Constitution.

3 SEC. 12. This act is an urgency statute necessary for the  
4 immediate preservation of the public peace, health, or safety  
5 within the meaning of Article IV of the Constitution and shall go  
6 into immediate effect. The facts constituting the necessity are:

7 In order to ensure that the essential services provided under the  
8 Substance Abuse and Crime Prevention Act of 2000 continue to  
9 be provided without interruption, it is necessary that this bill go  
10 into immediate effect.

11 SEC. 13. The provisions of this act are severable. If any  
12 provision of this act or its application is held invalid because it  
13 has not been approved by the voters, that section shall be put  
14 before the voters of the State of California in the next available  
15 election.

16 ~~SEC. 14. This act shall become operative only if Senate Bill~~  
17 ~~556 is also enacted and takes effect on or before January 1, 2006.~~